

SUMMARY MINUTES DURHAM BOARD OF ADJUSTMENT

August 22, 2000

The meeting was called to order at 8:30 a.m.

ROLL CALL

The Clerk called the roll and recorded attendance as follows:

MEMBERS SEATED

William Brian, Chairman
James Edney
Evelyn Lovett
Corinne Mabry, Vice Chair
David Smith
Kathy Wright-Moore

MEMBERS NOT SEATED

MEMBERS ABSENT

Lavonia Allison
Louis Goetz

STAFF PRESENT

Brenda J. Daniel, Clerk, Board of Adjustment
Dennis Doty, Planner
Betty Johnson, Planning Staff
Karen Sindelar, Deputy City Attorney
Lowell Siler, Deputy County Attorney
Helen Youngblood, Key Leader

SWEARING IN OF WITNESSES

The Chairman administered the oath to the following applicants and witnesses:

Helen Youngblood
Dennis Doty
Tom Stark
Robert Knowles
Clark Havighurst
Dan Jewell
Hutch Johnson
Lee Noel

Betty Johnson
Jan Tedder
Louis Gorazlier
Phil Huber
Karen Havighurst
Howard Partner
Patrick Byker
John Schelp

Information To Applicants

The Chairman noted that there were only 6 Board members present and the Board is usually made up of 7 members. He noted that in order for a request to receive approval, 5 of the 6 voting members would have to vote in support of the request. He then asked each applicant if they would like to have their case continued to such time that there are 7 members present. All applicants indicated they wanted their case heard today with 6 members.

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Conflicts of Interest/Early Dismissals

The Chairman asked if there were any conflicts of interest with any of the Board members and any of the cases before the Board today. He also asked if any Board members had to leave early.

The Chair noted that he has a conflict with Case B00-32 and would not seat for that case. He reminded the applicant that this means all the remaining 5 Board members would need to vote in support of this request in order for it to be approved. The applicant said he understood and still wanted to move forward with the request.

There were no requests for early dismissal.

HEARING AND DETERMINATION OF CASES

Ms. Youngblood asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Chairman Brian read the following statement into the record:

This Board is a quasi-judicial Board of record and as such, all testimony will be recorded. I'd like to ask at this point are there any members of this Board that would have any conflicts of interest with regard to the cases that are before us today? Are there any early dismissals at this time?

The proceedings of this Board will be governed by the zoning laws, as recorded.

As Chair of the board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

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Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-15 County

A request by Chris Howlett for an Adjustment to the MTC Buffer; as per Sections 5.3.2; 5.3.3; and 5.3.4. of the Durham Zoning Ordinance. The property is located between Farrington Road and I-40 and is zoned R-20 (MTC-F-J/B) Tax Map 969-01-005, PIN #708-01-47-5781

Staff Presentation was made by: Helen Youngblood

Appearing in Support: Attorney Stark

Persons Appearing in Opposition: None

Staff Recommendation was: That a 30' undisturbed buffer remain
That 5 parking spaces be removed
That tree protection be in conjunction with the 30' minimum buffer line and that an additional 109 feet be allowed for construction equipment. at the 30' line.

Motion: Mr. Smith made a motion to grant the request as submitted based on findings of fact by the Board that Sections 5.3.2, 5.3.3 and 5.3.4 of the Durham Zoning Ordinance.

Conditions: That a buffer reduction of 75' (25' to remain undisturbed) in accordance with the site plan submitted. 7/27/200 revised date.

Seconded By: Ms. Wright-Moore

Vote: 5 to 1 (Ms. Wright-Moore voted no)

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-30 City

A request by Jan Tedder for a Variance from the required setbacks (front, sides) to enclose a front porch on an existing nonconforming structure that is located on a conforming lot as per Sections 19.7.1, 16.2.1 of the Durham Zoning Ordinance. The property is located at 2507 W Knox Street and zoned R-3. Tax Map: 045-4-22 (Pin #0822-13-13-1821)

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Phil Huber, Ms. Jan Tedder

Persons Appearing in Opposition: None

Staff Recommendation was: N/A

Motion: Mr. Smith made a motion to grant the request as submitted, based on findings of fact by the Board that Sections 4A.7, 4, and 16 of the Durham Zoning Ordinance had been met.

Conditions: None

Seconded By: Ms. Wright-Moore

Vote: 6 to 0

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-31 City

A request by Crown of Righteousness Community Church for a Minor Special Use Permit to construct a 12,000 square place of worship with a seating capacity of 250, and other site improvements, as per Sections 4A.2.3.7, 7.28, 8.1.15, 9.4.1, 10.2.4, 12, and 13.1 of the Durham Zoning Ordinance. The property is located at 6200 Barbee Road and zoned R-20 (MTC, F/J-B). Tax Map 521-1-8 (Pin #0728-01-46-3740)

Staff Presentation was made by: Betty Johnson

Persons Appearing in Support: Robert Knowles, representing the Church; plus 10 members of the congregation of the Church, including the Pastor

Persons Appearing in Opposition: Lee Noel

Staff Recommendation was: Approval

Motion: Ms. Wright-Moore made a motion to grant the request as submitted based on findings of fact by the Bard that Sections 4A.2.3.7, 7.28, 8.1.15, 9.4.1, 10.2.4, 12 and 13.1 of the Durham Zoning Ordinance had been met.

Conditions: That the dumpster relocation issue be dealt with at the site plan stage.

Seconded By: Mr. Smtih

Vote: 6 to 0

Action: Granted

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SEATED: Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-32 City

A request by Leon Myers c/o Robert E. Whalen and Anna Ho Whalen for a Minor Special Use Permit to construct a 1,327 square foot detached accessory dwelling on a 2.43-acre tract as per Sections 4A.4.3.1; 7.23; 8.1.15; 13.1. of the Durham Zoning Ordinance. The property is located at 3620 Dover Road and zoned R-10. Tax Map: 265-3-10 (Pin #0810-18-30-3481)

Staff Presentation was made by: Dennis Doty

Persons Appearing in Support: Patrick Byker, Hutch Johnson with Design firm; Howard Partern, Christine Odom

Persons Appearing in Opposition: Clark Havighurst

Staff Recommendation was: Continuation to the next meeting to allow the applicant and the neighbor present in opposition an opportunity to meet and discuss his concerns and possibly come up with a solution that they both can agree upon.

Motion: Ms. Wright-Moore made a motion to continue the case to the September 12, 2000 meeting if we have one and if not, to continue the case to the September 26 meeting for the reason stated above.

Conditions: N/A.

Seconded By: Mr. Smith

Vote: 5 to 0

Action: Continued to September 12 or September 26, 2000

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-34A City

A request by Coulter Jewell Thames, P.A. for a Variance of 15' from the required minimum front setback on 9th Street and 25' from the required rear/front setback on a public alley in a GC zoning district for a nonconforming structure To construct an 11,955 square foot 2nd level office floor to an existing one-story (11,773 square foot) retail building as per Sections 16.2.1; 19.7.1A and .2.B. of the Durham Zoning Ordinance. The property is located at 803 - 821 Ninth Street located along the west side of Ninth Street and zoned GC. Tax Map: 12-9-4,5,7,9,10,11 (Pin #0822-14-32-9895; 0822-14-32-0900; 0822-14-32-0909; 0822-14-33-0019; 0822-14-33-0113; 0822-14-33-0116).

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Dan Jewell, Architect; John Schelp, President of the Old West Durham Neighborhood Association

Persons Appearing in Opposition: None

Staff Recommendation was: N/A.

Motion: Mr. Smith made a motion to grant the request a submitted based on findings of fact by the Board that Sections 4 and 16.2.1 of the Durham Zoning Ordinance be met.

Conditions: N/A.

Seconded By: Ms. Wright-Moore

Vote: 6 to 0

Action: Granted

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SEATED: Mr. Brian, Mr. Edney, Ms. Lovett, Ms. Mabry, Mr. Smith, Ms. Wright-Moore

Case B00-34B City

A request by Coulter Jewell Thames, PA. for a Minor Special Use Permit to construct an 11,955 square foot 2nd level office floor to an existing one-story non-conforming (11,773 square foot) retail building as per Sections 13.1; 19.7.1A and .2.B. of the Durham Zoning Ordinance. The property is located at 803 - 821 Ninth Street located and zoned GC. Tax Map: 12-9-4,5,7,9,10,11 (Pin #0822-14-32-9895; 0822-14-32-0900; 0822-14-32-0909; 0822-14-33-0019; 0822-14-33-0113; 0822-14-33-0116).

Staff Presentation was made by: Helen Youngblood

Persons Appearing in Support: Dan Jewell, Architect; John Schelp, President of the Old West Durham Neighborhood Association

Persons Appearing in Opposition: N/A.

Staff Recommendation was:

1. That an easement for the dumpster be filed in the Register of Deeds Office, prior to issuance of a Certificate of Occupancy.
2. That the site plan reflect the agreement with the neighborhood to change the exterior from stucco to red brick.

Motion: Ms. Wright-Moore made a motion to grant the request as submitted based on findings of fact by the Board that Sections 13.1, 19.7.1A and 19.7.2B be met.

Conditions:

1. That an easement for the dumpster be filed in the Register of Deeds Office, prior to issuance of a Certificate of Occupancy.
2. That the site plan reflect the agreement with the neighborhood to change the exterior from stucco to red brick.

Seconded By: Ms. Lovett

Vote: 6 to 0

Action: Granted

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Approval of Summary Minutes

Ms. Mabry made a motion, seconded by Mr. Edney to approve the summary minutes of July 25, 2000 as submitted. The motion passed unanimously

Old Business

Ms. Youngblood noted that the staff was working on all the backlogged denial orders. The following orders are now complete and waiting for the Chairman's signature if there are no further revisions.

Robert Pratt	Case B00-18 (Ms. Lovett made a motion, seconded by Mr. Smith to approve the denial order as submitted).
Tower site	Case B00-4
Tom Stark	Case B00-16 (denial order will be ready to present to the Board at the September 12 th or 26 th Board meeting)

The Board then voted to suspend their Rules of Procedure so that all members present could vote on the denial order for Case B99-64, The Power Company.

Ms. Wright-Moore made a motion to approved the denial order for The Power Company with one change, that a paragraph be added noting that the testimony provided proof that there had been a gap of up to 18 months in the operation of the business. Since 1994 there was a gap of more than 6 months). The motion was seconded by ms. Lovett.

The motion was unanimously approved.

Mr. Brian asked that the staff prepare Certificates of Appreciation for the Board members whose terms expired June 30, 2000 and the Board would make a special presentation to them at a later meeting date. It was requested that the staff prepare something special for past Chairman Connia Watson. All Board members concurred. The Board suggested maybe a small gift of some sort. The staff will handle that.

Mr. Brian asked that the denial orders for the cases be prepared on a more timely basis. He asked that they be ready and submitted to the Board the following month from when the case is heard, in most cases. Ms. Youngblood noted that it is sometimes difficult to word what the Board is noting as Section findings for denial of a case. She noted that the staff had prepared a work sheet for the Board to use in preparing denial orders. She said the staff would take those sheets and use them to prepare denial orders on a more accurate basis and more promptly.

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Mr. Brian, on behalf of the Board of Adjustment, offered condolences to the Clerk, Brenda Johnson Daniel on the loss of her mother earlier this month and to the Deputy County Attorney, Lowell Siler on the loss of his brother, earlier this month.

The acknowledgement was greatly appreciated by both persons.

Having no further business to come before the Board, the meeting adjourned at approximately 12:45 p.m.

Respectfully submitted,

**Brenda Johnson, Clerk
Durham Board of Adjustment**